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ABSTRACT

Recent developments have occurred which English teachers need to know about to make an accurate assessment of their role in combating the still growing form of nativism created by the English Only movement. First, a breakthrough in national politics has provided a tolerance and an appreciation of multilingualism in the United States. In the presidential campaign of 1988, the Democratic candidate addressed his convention in Spanish, and the Republic candidate had a member of his family, Hispanic herself, address that convention. Also, disclosures about and resignations of key individuals and political figures suggests that U.S. English--a lobby for English Only--has lost a major amount of prestige in the American press and that its leadership is in disarray. Secondly, a historical outline of English Only states reveals that the shift to the constitutional route for enacting this law has resulted in considerable difficulties or total defeat. Furthermore, even when passed, most of these English Only laws are either ignored by most persons or are viewed as "decorative and innocuous." Thirdly, new support for multilingualism exists at the federal level. Recent guidelines adopted by the Equal Employment Opportunity Commission regarding rules about language use in the workplace and alterations to the wording of the English Only proposed amendments to the United States Constitution evidence increased tolerance for multilingualism. (Twenty-two references are attached.) (KEH)

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Up-date and Implications for English Teachers of English Only Legislation

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Up-date and Implications for English Teachers

of English Only Legislation

Two years ago in Los Angeles, the NCTE had two major presentations on the problems created by the English Only movement; since that time, there have occurred major development which English teachers need to know about for an accurate assessment of their role in continuing to combat this still growing form of nativism and xenophobia.

A breakthrough in national politics

The presidential campaign of 1988 provided an opportunity for a major breakthrough for a tolerance and an appreciation of multilingualism in the United States. The Democratic candidate addressed his convention in Spanish, and the Republic candidate had a member of his family, Hispanic herself, address that convention. Not only were Hispanic voters being courted for their votes by these demonstrations; the speech acts themselves were major statements of the value of multilingualism, and the impact of those statements were not missed in the English Only camp.

Another major political development was the departure of William Bennett as Secretary of Education; long hostile to bilingual education (Crawford 1989a; 72-75); Bennett has taken a position as "Drug Czar" where the utilization of Spanish and other languages is a day-to-day occupational necessity. With the appointment of a Hispanic-surnamed, Texan Secretary of Education, perhaps now a more balanced view of bilingual education can emerge.

Leadership changes have also taken place at the major lobby for English Only campaigns--U.S. English. The 1988 release of a memorandum written by John Tanton, U. S. English's co-founder, a memo intended for his colleagues in Witan, a private study group, resulted in Linda Chavez's resignation from her position as president of U. S. English; Chavez's comment on the memo: "repugnant", "not excusable". Concurrent with the memo's release was the finding that U. S. English had received major contributions from one organization which had financed the distribution of racist propaganda about immigrants and from another organization advocating policies of eugenic sterialization. Normal Cousins had already resigned from U. S. English's advisory board over differences of intent behind California's Proposition 63; with the new revelations, Walter Cronkite also resigned and instructed U. S. English not to use his name for fund raising. John Tanton was also forced to resign to save U. S. English from further embarrassment (Crawford 1989a; 57-58; Califa 1989; 299), but his connections have not all be

severed, and there is reason to believe he may continues behind the scenes at U. S. English (Crawford 1989b; 11).

The implications of these disclosures and resignations are two-fold: first, U. S. English has lost a major amount of prestige in the American press and their hidden agenda of anti-Hispanicism and xenophobia has been widely exposed; second, the leadership of U. S. English has been in disarray (Crawford 1989b; 9). The adverse publicity has forced U. S. English to be more careful in its pronouncements, limiting itself to issues more closely tied to language only. However, there are possibilities for Tanton to return to U. S. English through a planned public relations campaign cleaning up his and their public images. Meanwhile, U. S. English has suffered staff moral problems and several firings and resignations because of the disclosure of their hidden agenda (Crawford 1989b; 11).

The increase of English Only states:

English has become the official language of 17 states so far; in chronological order:

Nebraska 1920 (constitutional amendment)

Illinois 1969 (statute)

Virginia 1981 (statute)

Indiana, Kentucky, Tennessee 1984 (statute)

California 1986 (constitutional amendment)

Georgia 1986 (ceremonial resolution)

Arkansas, Mississippi, North Carolina,

North Dakota, South Carolina 1987 (statute)

Arizona, Colorado, Florida 1988 (constitutional

amendment)

(Crawford 1989a; 66, n. 1; Califa 1989; 300, n. 55).

In 1978, Hawaii passed a constitutional amendment making English and Hawaiian official languages (Marshall 1986a; 47); if Hawaii is counted, which it probably should *not* be because of its constitutional stance of bilingualism, there are 17 states with official English laws, but only five of those have had the law made into a constitutional amendment.

The implication of this historical outline is that U. S. English seems to have shifted to the constitutional route for enacting the laws; it has done so for two reasons: first, because constitutional measures are easier to pass in states with referenda and other voter-initiated legislative machinery; second, because constitutional amendments are much more difficult to change or delete. However, it has not been all success for U. S. English; in 1989, bills were pending in Kansas, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and Wisconsin. A constitutional amendment will be voted on in Alabama in 1990, but bills in other states have been defeated, some more than once; Connecticut, Maryland, Missouri, New Hampshire, Texas, Utah and West Virginia saw English

Only measures either defeated or killed for lack of legislative action (*EPIC EVENTS* 1989, 2:2-3, 5).

Problems for English Only laws already on the books:

Even when passed, most of these laws are either ignored by most persons or are viewed as "decorative and . . . innocuous," equivalents of official state birds or flowers or insects (Fishman 1988; 128). In Executive Order Number 89-7, Bob Martinez, governor of Florida, proclaiming Florida's official English constitutional amendment, stated: "The use of languages other than English in our economic, social, or political institutions or by an employee in the workplace shall not be restricted" (*EPIC EVENTS* 1989, 2:1, 7). Similar statements have been made by the governor of Colorado and the mayor of Denver; an attorney's general ruling in Arizona, which has the most draconian constitutional amendment, stated that the law "does not prohibit the use of languages other than English that are reasonably necessary to facilitate the day-to-day operation of government" (Combs 1989; 4, 6).

Attempts to enforce already-existing English Only legislation has not met with much success. In California, an attempt to reject bilingual education under its constitutional amendment was defeated (*Teresa P. v. Berkeley United School District* Civ. Action No. C 87 2396 DLJ (N.D. Cal. Feb. 14, 1989)); U. S. English attempted to have the state attorney general stop the use of bilingual ballots in several California cities, cities not covered by the federal Voting Rights Act; the

State of California refused to comply with U. S. English's request (Califa 1989: 302). In another case, *Gutierrez v. Municipal Court* (838 F.2d 1031 (9th Cir. 1988) *vacated as moot*, 57 U.S.L.W. 3687 (U. S. Apr. 17, 1989) the court determined that a worker was wrongfully dismissed for speaking Spanish to a co-worker, further undermining the enforcement of California's English Only amendment (Califa 1989; 302, 311, n. 133). A thinly veiled attempt to limit the number of foreign language books in the Monterey Park, California, library, which resulted in the library board being disbanded by the City Council, was turned back and the board reinstated by the California Court of Appeals; the result was that another effort by backers of English Only laws was reversed in court (*EPIC EVENTS* (1989) 2:2-3, 4).

New support for multilingualism at the federal level:

In 1988, the Equal Employment Opportunity Commission (EEOC) adopted guidelines regarding rules about language use in the workplace. This ruling, used to decide unfair dismissals, reads, in part:

> The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority,

> isolation and intimidation based on national origin which could result in a discriminatory working environment . . . . (Califa 1989; 310, n. 125).

Even when enacted English Only laws have not been received favorably by the courts (for details, see Califa 1989). Even state constitutional amendments, when tested in court, have not fared well. In the Gutierrez case, the Federal Circuit Court agreed with the EEOC that English Only laws might be upheld solely for reasons of business necessity; however, the court found the contested employee rule not to be a business necessity in the Gutierrez case (Califa 1989; 311, n. 133).

What this means is that passing a law does not necessarily change society; English Only laws on the books can be ignored or circumvented, found faulty, perhaps even unconstitutional. Califa 1989 argues that the Shumway version of the national English Only amendment (H. J. Res. 81) , one of two that goes beyond just declaring English the official language of the land, establishes "suspect traits" which would endanger its acceptance by the Supreme Court as constitutional. However, if passed as a constitutional amendment, this act would have disastrous effects, as outlined in Gonzalez's paper, which you just heard (Gonzalex 1989).

There is an increasing amount of case law at district and appeal divisions that recognizes language as a proxy for national origin; with this link between language and national origin, since discrimination because of a person's national origin is prohibited by law, then discrimination because of language also becomes part of that prohibition, making English Only laws more suspect constitutionally

(Califa 1989). We still are awaiting a clear-cut ruling from the Supreme Court, and U. S. English's growing reluctance to push its cause in higher and now even lower courts demonstrates that they, too, are fearful of their legislation's constitutionality.

Changes in proposed English Only amendments:

In Congress, the wordings of the English Only proposed amendments to the U. S. Constitution have changed recently. The earlier text of the resolution in the House read:

> Section 1. The English language shall be the official language of the United States.
>
> Section 2. Neither the United States nor any State shall make or enforce any law which requires the use of any language other than English.
>
> Section 3. This article shall apply to laws, ordinances, regulations, orders, programs, and policies.
>
> Section 4. No other or decree whall be issued by any court of the United States or of any State requiring that any proceedings, or matters to which this article applies be in any language other than English.
>
> Section 5. This article shall not prohibit educational instruction in a language other than English as required as a transitional method of making students who use language other than English proficient in English.
>
> Section 6. The Congress and the States shall have power to enforce this article by appropriate legislation. (Marshall 1986a; 24)

This wording stood for several years, but was changed in the 101st Congress to the following:

Section 1. The English language shall be the official language of the United States.

Section 2. Neither the United States nor any State shall require, by law, ordinance, regulation, order, decree, program, or policy, the use of any language other than English.

Section 3. This article shall not prohibit any law, ordinance, regulation, order, decree, program, or policy--

(1) to provide educational instruction in a language other than English for the purpose of making students who use a language other than English proficient in English.

(2) to teach a foreign language to students who are already proficient in English,

(3) to protect public health and safety, or

(4) to allow translators for litigants, defendants, or witnesses in court cases.

Section 4. The Congress and the States may enforce this article by appropriate legislation. (H. J. Res. 81, 101st Congress)

It doesn't take a constitutional specialist to recognize that there had been a change of position reflected in the amendment's wording, recognizing several areas

in which the former wording would have denied human rights. There still remain numerous areas where the present amendment endangers current constitutional privileges: voting rights and maintenance bilingual education among others. For a fuller discussion of rights which could be lost in adoption of Shumway's current bill (H. J. Res. 81), see Califa 1989 in the *Harvard Civil Rights-Civil Liberties Law Review* (293-348).

Another bill, H. J. Res. 23, proposed by Smith of Nebraska, is very similar to Shumway's earlier wording. Two other proposals, (H. J. Res. 48 and 79) echo the Senate amendment's wording which just makes English "the official language of the United States" and gives Congress the powers to enforce the article by appropriate legislation, a carte blanche for possible future discrimination.

The implications of the rewording of Shumway's bill are interesting, for this rewording demonstrates that legal opposition to these amendments have detailed and technical grounds which the wording of a constitutional amendment cannot handle easily if at all. The Constitution has only been amended 16 times since the Bill of Rights, and part of the reason for that paucity of amendment is that it is very difficult to write an amendment that creates the desired effect without being too broad and endangering other's civil rights (Flaherty 1984).

The record of the national English Only constitutional amendments has been bleak for U. S. English, and will probably remain so, forcing them to try Congressional pressure through individual state legislations. Hearings in the Senate

in 1984 and in the House in 1988 were unable to pry the proposed amendments out of committee because of major, organized opposition. There is little reason to doubt that that will not remain the situation for the foreseeable future.

Increased attention to language issues:

One major impact of the discussion on English Only over the past two years has been the great increase in research and publication in this area by language experts. Several major volumes have been written or are awaiting publication (for an example, see Brink and Evans 1990). The educated public has become aware of some complexity in the issues, and public discussion is more frequent. When warning of the dangers of the English Only amendments and lobby now, one doesn't feel like a lonely wanderer in the desert, which could have characterized some of us in 1984.

The opposition to the English Only lobby has solidified somewhat, and has gained because of that cooperation. The emotional reaction to the anti-Hispanic flavor of these law has been so intense that "it unites Hispanic communities which otherwise differ in many important respects" (Califa 1989; 324). With the establishment of the English Plus Information Clearinghouse in 1989, along with publication of its *EPIC EVENTS* newsletter, diverse groups and organizations: churches, study groups, unions, academic associations, etc. have banded together to fight discrimination via language restriction. The National Council of Teachers of English was one of the original participants in EPIC (English Plus Information

Clearinghouse) and has supported its efforts through education and appearances before several legislative committees (*EPIC EVENTS* 1989; 2:1, 3.

Research in the English Only hidden agenda has resulted in new insights about what conditions in the United States have caused the successes of the English Only lobby groups (for example, see Fishman 1988; Ruiz 1990, Marshall and Gonzalez 1990). The same research has helped others see the benefits of preserving languages and the increased values that derive from multilingualism (for example, see Fishman 1988; Shanahan 1989; Marshall and Gonzalez 1989). There is now abroad in our land the sprouting of a renewed interest in defining the educated person as also one who speaks more than one language (for examples, see Edwards 1989; Shannahan 1989).

What these English Only laws have reflected are "the cultural insecurity and prejudice of their supporters" (Califa 1989; 330; see also Gonzalex, Schott and Vasquez (1988), an insecurity that is motivated by several fears. First, some fear that the United States is incapable of controlling its border with Latin America; thus fear concerns drugs probably more than it does immigration. Second, because Hispanics are immigrating to the United States at a time when they are more empowered than previous immigrants--having bilingual ballots and bilingual education which previous immigrants did not have, they, Hispanics, seem more threatening because of their growing political power; there is a long history of discrimination against Hispanics in American life, and with the coming to power

by Hispanics, they may be a long over-due bill to pay. Third, the English speaking majority is disquieted because it does not know how to grapple with the major, crucial economic, social and political changes affecting it, and therefore it searches for simplistic answers (Califa 1989; 328-9). The moral collapse of the neo-conservative Reagan policies have left the young people of America wondering in which direction the nation is going. Is there still an American dream, is social upward mobility possible, or did we have its funeral with Ron and Nancy? There can be no doubt that these fears have generated racist myths, raised old specters of nativism, and led to the espousing of laws that would be harmful to the very definition of what this country stands for. English Only laws have very dangerous and discriminatory consequences for every American no matter what language he or she speaks. The question is not really about language, but about what we as a nation are; it is about how we define ourselves as we enter the 21st century.

Perhaps the best statement of the issue thus far has come from Fishman (1988); after demonstrating the economic, social, psychological and political necessities for the preservation of linguistic pluralism in the United States, he writes:

> Neither major partner in the American idea and the American experience has done right in so far as fostering linguistic pluralism is concerned. Each has to be taught that in the American tradition *unum* and *pluribus* go hand in hand. The *unum* grows out of the

pluribus but does not replace it! The *unum* ideal and the *unum* reality pertain to our love for and loyalty to America and its fundamental political institutions and commitments. The *pluribus* ideal pertains to our substantive values, to our religious commitments, to our problem-solving approaches, to the living ethnic heritages, the costreams of American life and American vision that remain alive for million upon millions of our citizens. In a system of checks and balances, it is the *pluribus* ideal that counterbalances the *unum* ideal. Each saves the other from excesses, and it is the *pluribus* must rally their forces of conviction and of persuasion, because pluralism is the very genius of America: pluralism of political jurisdictions, pluralism of educational jurisdictions; pluralism is religious faiths (most of which, by the way, are ethnically focused as well), and pluralism of intellectual and philosophical outlooks. It is this broad-minded and good-hearted pluralism that have made America great and no mean-spirited, ghost-battling, witch-hunting, frightened bullyboys can long deflect it from the patrimony of *pluribus* that has made it great in the past and that will keep it so in the future. (Fishman 1988; 138)

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